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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,102	08/11/2000	David C. Schwartz	960296.97133	7761

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EXAMINER

DAVIS, DEBORAH A

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 07/02/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/638,102

Applicant(s)

SCHWARTZ, DAVID C.

Examiner

Deborah A Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4-18-02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 14-21 and 23-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I – claims 1-13 and 22 in Paper No. 8 is acknowledged.

Drawings

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-13 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 2, line 2, "the maximum cross-sectional dimension" lacks antecedent basis.
6. Claim 5, line 1, "the non-reactive strip" lack antecedent basis.
7. Claim 9, line 2, recite the limitation "recessed portions" is unclear and indefinite because it is not known what is meant by this term.

8. Claims 11, 13 and 22 are redundant; they also recite the limitation "the marker" which lacks antecedent basis.

Claim Rejections - 35 USC § 102

9. (The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 3, 6, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gross et al (USP# 4,867,946).

Gross et al anticipates the instant claims by teaching a device for evaluating test strips used to screen a variety of different samples. The test strips contain several test sections where the reagents are placed for testing (col. 1, 2nd para and see Figure 2). The device has a platform and a holder to support the test strips (col 2, see claim 1) in a parallel relationship (see Figure 2). The test strip has test sections spaced along the strips to allow samples to be deposited (see Figure 2).

Claim Rejections - 35 USC § 103

11. Claims 4, 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross et al (USP# 4,867,946) in view of Stuelpnagel et al (USP#6,396,995).

The teachings of Gross et al are set forth above and differ in the instant invention because it does not specifically point out that the organic compounds used are from the groups of oligonucleotides and peptides and that the substrate is of glass fiber.

Stuelpnagel et al teaches an optical imaging system that contains an array of multiple fiber optic bundle strips (see figure in abstract). In the detailed description of the preferred embodiments, a variety of bioactive agents are used in his optical system (col. 12, lines 26-32) such as oligonucleotides, polypeptides, proteins etc. (col. 11 paras. 4 and 5). A variety of bioactive agents are used to provide a sufficient range of binding to target analytes (col. 12, lines 26-32).

It would have been obvious to one of ordinary skill in the art to incorporate a variety of bioactive agents of Stuelpnagel et al in the screening device of Gross et al to have a sufficient range of binding to target analytes. With respect to claim 8, it would have been further obvious to use a chemical repellant coating between reactive substances to prevent cross contamination between them.

12. Claims 10-13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross et al (USP# 4,867,946) in view of Bentsen et al (USP#6,372,895).

The teachings of Gross et al are set forth above and differ in the instant invention because it does not teach strips that include a marker selected from the group of printing and fluorescent material.

However, Bentsen et al teaches in one of his embodiments an apparatus that uses a test strip that contains a printed barcode wherein the printed material on the

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barcode has an enzyme or spore. The strip is further sterilized and dipped into a buffer solution containing Fluorescence Enzyme Substrate (FES). If enzyme activity is present, the printed pattern will become detectable (col. 20, lines 66-67 and col. 21, 1st para.).

It would have been obvious to one of ordinary skill in the art to have incorporate the printed barcode as taught by Bentsen et al into the strips of Gross et al to detect enzyme activity.

13. For reasons aforementioned, no claims are allowed.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

A. Abrams et al (PGP# US2002/0015952) discloses microarrays and their manufacture by slicing.

B. Bouma et al (USP# 5,645,801) discloses a device and method for amplifying and detecting target nucleic acids.

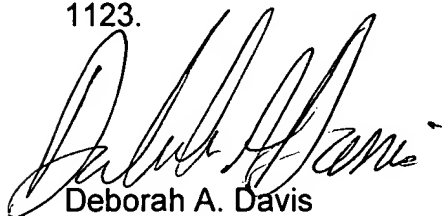
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah A Davis whose telephone number is (703) 308-4427. The examiner can normally be reached on 8-5 Monday thru Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (703) 305-3399. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1123.



Deborah A. Davis
CM1, 8D08
June 7, 2002



LONG V. LE
SUPERVISORY PATENT EXAMINER
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06/11/02